ABDUL RAZAK AHMAD

v.

MAJLIS BANDARAYA JOHOR BAHRU

HIGH COURT MALAYA, JOHOR BHARU
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK J
[ORIGINATING SUMMONS NO. 24-974-OF 1994]
18 MARCH 1995

PRACTICE & PROCEDURE: *Defendant's application to strike out plaintiff's originating summons - Whether plaintiff's originating summons discloses no reasonable cause of action - Order 18 r. 19(1)(a) RHC 1980 - Whether plaintiff's originating summons is otherwise an abuse of the process of the Court - Order 18 r. 19(1)(d) RHC 1980 - Whether plaintiff has locus standi, either at law or by statute, to bring and maintain an action against defendant.*

The plaintiff filed an originating summons seeking declarations that the planning permission given by the defendant for the Floating City project was void and invalid, being in contravention of the Town and Country Planning Act 1976. The plaintiff also sought a declaration that any permission given by the defendant for the construction of the Floating City was void, being in contravention of the Street, Drainage and Building Act 1974 and the Uniform By-Laws 1984.

The defendant made an application, under O. 18 r. 19 of the Rules of the High Court 1980 (RHC1980), to strike out the plaintiff's originating summons and the question that arose was whether the plaintiff had the *locus standi* to bring the action.

Held:

[1] For a plaintiff to found an action against the defendant who is a public body, he must show that he has suffered a peculiar damage by the alleged public wrong and that he has a genuine private interest to protect. The plaintiff here has failed to show by evidence that he has suffered any damages as a result of the construction of the floating city by way of nuisance or trespass except to say that he was aggrieved as a taxpayer and a road user.

[2] As rate-payer, the plaintiff's house is not located near the floating city. It is located some miles away from it and in this regard the plaintiff has failed to show by evidence that he has suffered any special damage arising out of the alleged purported breach of the relevant law by the defendant. As a road user, the plaintiff claimed that the development of the floating city affected his usage of the beach front road. Applying the *Government of Malaysia v. Lim Kit Siang*, the plaintiff cannot be said to be prevented from using other available internal roads to proceed to his office. In the circumstances, there was no genuine private interest for the plaintiff to protect.

[3] Applying the principles in *District Council Central, Province Wellesly v. Yegappan*, even assuming that there were breaches of the relevant laws by the defendant, the plaintiff must positively show to the Court that his legal right or interest would be affected by that development before he can be said to have *locus standi*. This the plaintiff has failed to prove and, consequently, he has no *locus standi* in these proceedings.

[4] The crucial word in s. 21(b) of the Town and Country Planning Act 1976 is "adjoining". It is quite obvious that the plaintiff's house is not adjoining the project undertaken by Johor Coastal Development (JCD) and this is clearly reflected in the location

plan. The plaintiff not being an adjoining land owner is not in a position to assert positively that his legal position would be affected by the planning permission that was granted to JCD by the defendant.

[5] The plaintiff, lacking *locus standi* in law or by statute, cannot ask for the declaration that the planning permission granted by the defendant was invalid as it contravened the Town and Country Planning Act 1976 or for that matter that the commencement of the works by JCD was contrary to and in breach of the Street, Drainage and Building Act 1974 read together with the Uniform Building By-Laws 1986 unless he can show positively and affirmatively that the alleged breaches have substantially caused damage to him personally, which he has failed to do.

[6] In the circumstances, this was a fit and proper case for the exercise of the discretionary powers under O. 18 r. 19(1)(a) and (d) of the RHC 1980.

[Plaintiff's originating summons struck out and dismissed with costs].

Cases referred to:

Shanghai Hall Ltd v. Town House Hotel Ltd. [1967] 1 MLJ 223 ***(refd)***
Overseas Investment Pte. Ltd. v. Anthony William O'brien and Anor. [1988] 3 MLJ 332 ***(refd)***
Alloy Automotive Sdn. Bhd. v. Perusahaan Ironfield Sdn. Bhd. [1986] 1 MLJ 382 SC ***(refd)***
Alfred Dunhill Ltd. v. Sunopic SA [1979] FSR 337 ***(refd)***
Datuk (Datu) Amir Kahar bin Tun Haji Mustapha v. Tun Mohd. Said bin Keruak [1994] 3 MLJ 737 ***(refd)***
Abdul Razak Ahmad v. Kerajaan Negeri Johor & Anor [1994] (3) AMR 47 ***(refd)***
Letang v. Cooper [1965] 1 QB 232 ***(refd)***
Government of Malaysia v. Lim Kit Siang, United Engineers (M) Bhd. v. Lim Kit Siang [1988] 2 MLJ 12 SC ***(refd)***
Attorney General of Hong Kong v. Ng Yuen Shiu [1983] 2 AC 629 PC ***(dist)***
Lee Freddie & Ors v. Majlis Perbandaran Petaling Jaya & Anor [1994] 3 MLJ 640 ***(dist)***
Lim Cho Hock v. Government of State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh [1980] 2 MLJ 148 ***(refd)***
Tan Sri Haji Othman Saat v. Mohamed bin Ismail [1982] 2 MLJ 177 ***(refd)***
Tengku Jaafar bin Tengku Ahmad v. Karpal Singh [1993] 2 AMR 35: 2062 ***(refd)***
Province Wellesley v. Yegappan [1966] 2 MLJ 177 ***(refd)***
R. v. Hodges [1829] 173 ER
Ecclesiastical Commissioners for England's Conveyance [1936] 1 Ch. Div 430 ***(refd)***
Mac Donald v. Glasgow Corporation [1960] SLT Sh. C.T 21 (Scottish Law Times) ***(refd)***
Dyson v. Attorney General [1911] 1 KB 417 ***(refd)***
Ibeneweka v. Egbuna [1964] 1 WLR 219 PC ***(refd)***
Guaranty Trust Co. v. Hannay [1915] 2 KB 536 ***(refd)***
Helzger v. Department of Health and Social Security [1977] 3 All ER 444 ***(refd)***
Thorne Rural District Council v. Bunting [1972] Ch. 470 ***(refd)***
Domer v. Gulf Oil (Great Britain) [1975] 119 SJ 392 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 15, r. 16, O. 18 r. 19(1)(a), (d), O. 41, O. 53, O. 92 r. 4
Street, Drainage and Building Act 1974, ss. 3, 70, 72(1)(b)
Town and Country Planning Act 1976, s. 21(6)
Town and Country Planning Act 1947, (UK) s. 10(3)(b)
Uniform Building By-Laws 1986, By-law 13(1)

Other sources referred to:

Shorter Oxford English Dictionary
Britannica World Language Dictionary, Vol. 1, p. 23

For the plaintiff - Abdul Razak Ahmad; M/s. Abdul Razak Ahmad & Assoc.
For the defendant - Roger Tan Kor Mee; M/s. Nik Saghir & Ismail
For the State Government of Johor - Abdul Alim Abdullah, State Legal Advisor (on watching brief).
For the Johor Coastal Development Sdn. Bhd. - Chin Yew Meng (on watching brief)
For the Johor Bahru City Council - Ungku Faridah Ungku Aziz (on watching brief)

JUDGMENT

Hj. Abdul Malik bin Hj. Ishak J:

This was an application by the defendant by way of summons-in-chambers (enclosure 9) to strike out the plaintiff's originating summons (enclosure 4) wherein the plaintiff sought for the following prayers:

1. Satu deklarasi bahawa kelulusan kebenaran merancang ("planning permission") bagi projek Kota Terapung di Selat Tebrau yang telah diluluskan pada 12 Januari 1994 oleh defendan kepada Johor Coastal Development Sdn. Bhd. adalah tidak sah dan tidak berkuatkuasa kerana ianya bercanggah dengan Akta Perancangan Bandar dan Desa, 1976.
2. Kebenaran jika ada, yang telah diberi oleh defendan kepada Johor Coastal Development Sdn. Bhd. untuk memulakan kerja-kerja pembangunan di projek Kota Terapung adalah tidak sah kerana melanggar Street, Drainage and Building Act, 1974 dan Uniform By Laws 1984.
3. Bahawa plaintif berhak mendapat jawapan daripada defendan mengenai surat yang telah dikemukakan kepada defendan yang bertarikh 7 September 1994.
4. Kos.
5. Apa-apa relief yang difikirkan sesuai dan adil oleh Mahkamah yang mulia.

At the outset, Encik Roger Tan Kor Mee acting for the defendant raised a preliminary objection to the effect that prayer one of the plaintiff's originating summons in enclosure 4 had gone stale and became academic and therefore it was a sheer waste of judicial time to proceed with the hearing of enclosure 4. It seemed that the planning permission dated 12 January 1994 granted to the Johor Coastal Development Sdn. Bhd. ("JCD") by the defendant to develop the floating city had lapsed on 11 January 1995, and the defendant had issued a fresh planning permission to JCD on 12 January 1995. These facts could be gleaned from the further affidavit of the defendant affirmed through Dato' Haji Hashim bin Haji Yahaya, the Dato' Bandar himself (enclosure 12).

Encik Abdul Razak Ahmad, in his personal capacity as the plaintiff, submitted that originating summons in enclosure 4 dated 19 November 1994 was supported by an affidavit of the plaintiff himself dated 17 November 1994 as opposed to the further affidavit of the Dato' Bandar (enclosure 12) which was affirmed on 20 January 1995 and, consequently, he submitted that when the originating summons in enclosure 4 was filed the planning permission granted to JCD was still valid and what was sought then in prayer 1 was perfectly legitimate and not academic in nature. Alternatively, he submitted that even if prayer 1 to enclosure 4 was, by effluxion of time, academic and a waste of judicial time to adjudicate upon, yet prayers 2 and 3 of enclosure 4 were good and valid as they were under a different set of laws and should be adjudicated upon.

In an emotional outburst Encik Abdul Razak Ahmad submitted that he disliked going to Court and if the defendant had answered his letter as reflected in exhibit "ARA 1" in enclosure 3 he would not have pursued the matter further. He submitted that Johor Bahru did not belong to the Dato' Bandar who could be removed from office at any time; the rate-

payers were entitled to be heard and the manner in which the defendant was managed left much to be desired.

The defendant's Counsel drew the Court's attention to the failure of the plaintiff to file an affidavit in opposition to that filed by the Dato' Bandar in enclosure 12 and he submitted that this was fatal. Raja Azlan Shah J, (as His Royal Highness then was) in *Shanghai Hall Ltd. v. Town House Hotel Ltd* [1967] 1 MLJ 223 at page 224 FC speaking for the Federal Court had this to say on the duty to file an affidavit in opposition:

> The appellants did not file any affidavit. Pausing here for a moment, I agree with the learned Judge that omission to file an affidavit in reply was not fatal to the appellants' case as they were not obliged to do that.

Here, the crucial question to ask is this: was the plaintiff obliged to file an affidavit in reply to enclosure 12 as filed by the Dato' Bandar? Obviously, the whole case had to be decided on affidavit evidence alone and thus the plaintiff should have filed an affidavit in reply as he must have realised the importance of replying to the Dato' Bandar's affidavit. Consequently, the failure of the plaintiff in filing an affidavit in opposition would mean that the plaintiff admits to what was alleged in enclosure 12 (*Overseas Investment Pte. Ltd. v. Anthony William O'brien and Anor.* [1988] 3 MLJ 332). Way back in 1986, Lee Hun Hoe CJ (Borneo) (as he then was) said in *Alloy Automotive Sdn. Bhd. v. Perusahaan Ironfield Sdn. Bhd.* [1986] 1 MLJ 382 SC:

> There is force in the appellant's contention that an affidavit must reply specifically to allegations, and if it does not, then those allegations not replied to must be taken to have been accepted.

In my judgment, affidavits play a crucial role in originating summonses as submissions and decisions are primarily hinged on affidavit evidence. I am sure the plaintiff being a lawyer should know the value of affidavit evidence in an application of this nature. He should know and cannot be said not to know that affidavits should contain facts known to him and not legal arguments and submissions of law (*Alfred Dunhill Ltd. v. Sunopic SA* [1979] FSR 337 at pages 352 and 373). It is germane to mention that the basic rules of affidavit practice are contained in O. 41 of the Rules of the High Court, 1980 ("RHC") and legal practitioners are encouraged to refer to it.

Next, to ground their preliminary objection the defendant argued that O. 92 r. 4 of the RHC should be invoked so as to vest the Court with the "inherent power ... to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court." The plaintiff argued that the very drastic power as set out in O. 92 r. 4 of the RHC should be sparingly used. I agree. The Court will certainly not apply O. 92 r. 4 of the RHC to all cases indiscriminately. The Court is duty bound to determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

Since prayers 2 and 3 of the plaintiff's originating summons (enclosure 4) were quite distinct from prayer 1 thereof, I had no choice but to disallow the preliminary objections. As agreed by both parties, I had first to decide on the defendant's application in enclosure 9 before proceeding to enclosure 4. The method of tackling the issues, as will soon be seen, serves both parties well as all the facts were scrutinised, argued and placed before the Court for adjudication.

The defendant's application in enclosure 9 was grounded under O. 18 r. 19(1)(a) of the RHC ("it discloses no reasonable cause of action") and under O. 18 r. 19(1) (d) of the RHC ("it is otherwise an abuse of the process of the Court"). The defendant did not file any affidavit in support of their application as they felt, rightly so, that no affidavit was required to support an application under O. 18 r. 19 of the RHC (*Datuk (Datu) Amir Kahar bin Tun Haji Mustapha v. Tun Mohd. Said bin Keruak* [1994] 3 MLJ 737).

The Dato' Bandar on behalf of the defendant and in his affidavit at enclosure 7 which was affirmed on 27 December 1994 and subsequently corrected by a corrective affidavit at enclosure 8 aptly described the plaintiff as a busy body ("sebagai seorang menjaga tepi kain'). The Dato' Bandar must have been prompted to describe the plaintiff as such in view of the previous originating summons number 24-121-94 filed by the plaintiff against the Johor State Government on the same subject matter but on different grounds (see *Abdul Razak Ahmad v. Kerajaan Negeri Johor & Anor.* [1994] (3) AMR 47 at page 2463; [1994] 2 MLJ 297). Incidentally, the plaintiff had also filed another originating summons number 24-830 of 1993 citing the Ketua Pengarah, Kementerian Sains, Teknologi dan Alam Sekitar as a defendant in an attempt to obtain a "laporan penilaian kesan alam sekitar mengenai projek pembinaan Kota Terapung di Selat Tebrau yang akan di majukan oleh Johor Coastal Development Sdn Bhd" and he succeeded in his endeavour before the High Court, Johor Bahru. Thus, it was not surprising that when the Dato' Bandar received a letter by hand dated 7 dated September 1994 from the plaintiff as reflected in exhibit "ARA 1" of enclosure 4, the Dato' Bandar remained silent - too scared to reply. That letter was worded thus:

Serahan Tangan 7 September 1994

Yang Berbahagia,
Dato Bandaraya Johor Bahru
Majlis Bandaraya,
Johor Bahru.

Yang Berhormat Dato',

Projek Kota Terapung di Selat Tebrau

Kami mewakili Encik Abdul Razak yang tinggal di alamat No. 26, Jalan Rubi, Taman Kolam Air, Johor Bahru dan kami telah diarah sebagai seorang penduduk di Bandar Johor Bahru beliau telah terjejas dengan pembangunan "Kota Terapung", satu projek penswastaan yang sedang di laksanakan secara usahasama oleh Johore Coastal Development Sdn. Bhd. dan Kerajaan Negeri Johor.

Kami selanjutnya telah diarahkan bahawa projek Kota Terapung itu terletak dalam kawasan pihak berkuasa tempatan (local planning authority area) yang mana Mailis Bandaraya Johor Bahru mempunyai kuasa dari segi undang-undang untuk mengatur, mengawal dan merancang pembangunan dan penggunaan tanah dan bangunan di kawasan projek tersebut.

Pelanggan kami juga di fahamkan Majlis Bandaraya Johor Bahru telah meluluskan permohonan Johore Coastal Development Sdn. Bhd. untuk kebenaran merancang (planning permission) di kawasan projek berkenaan dan pihak Majlis Bandaraya Johor Bahru sebagai pihak berkuasa perancang tempatan telah meluluskannya pada 12 Januari 1994.

Kami selanjutnya telah diarahkan untuk mendapat pengesahan daripada, Dato' perkara-perkara berhubung dengan kebenaran merancang yang telah diluluskan oleh Mailis Bandaraya Johor Bahru khususnya perkara-perkara seperti berikut:

(i) sudahkah Majlis Bandaraya Johor Bahru memberi notis kepada tuan-tuan punya tanah yang berhampiran dengan kawasan projek tersebut sebagaimana yang dikehendaki di

bawah s. 21(6) Akta Perancang Bandar dan Desa 1976 (Akta 172); dan

(ii) jika tindakan memberi notis secara bertulis sudah dilaksanakan, bilakah notis tersebut diserahkan kepada tuan-tuan punya tanah yang berkenaan.

Kami merasa sukacita jika dapat Dato' memberi pengesahan kepada pertanyaan kami itu dengan kadar segera dan tidak lewat dari tujuh (7) hari dari tarikh surat ini.

Atas kerjasama Dato', kami ucapkan terima kasih.

Yang benar,

(Sgd)

The ambitious floating city was divided for purposes of development into three parcels. In a preliminary environmental impact assessment for the floating city prepared by Erinco Sdn. Bhd. dated January 1991 and exhibited as exhibit "ARA 3(A) - (G)" it was stated that:

Under the project, a total area of 50.7 hectares (125.23 acres) of land shall be reclaimed in three (3) parcels. The first, stretching from west of the Causeway up to Istana Besar Gardens is referred to as Parcel A. The reclamation area is proposed to accommodate a number of buildings for commercial use, hotels and cultural village. The area shall also function as an extension to the Central Business District (CBD) of Johor Bahru.

Parcel B, the second reclamation parcel, is intended specifically for only the proposed road-widening of the coastal road to accommodate the projected increases in traffic volume. Approximately 1.0 hectare (2.47 acres) shall be reclaimed for such purposes.

The third reclamation parcel covering an area of 23.38 hectares (57.75 acres) (Parcel C) shall extend from the waterfront opposite the Sultanah Aminah General Hospital and terminate at the Harbour Master's office. The area is intended for mainly residential land use comprising a number of blocks of condominiums and their associated facilities. In addition, a Hotel and Convention Centre is also proposed to be sited on the development parcel.

However, the Dato' Bandar in his affidavit (enclosure 7) which was affirmed on 27 December 1994 and corrected by the corrective affidavit affirmed on 28 December 1994 (enclosure 8) deposed that the "pembinaan yang sedang dijalankan oleh Johor Coastal Development Sdn. Bhd. adalah berkaitan dengan penyelebaran dan Pembinaan Jalan Selat Tebrau untuk pihak Kerajaan Negeri dan tidak meliputi sebarang pembinaan bangunan di atas tanah tersebut dan dengan demikian tidak bercanggah dengan peruntukan s. 70 Street, Drainage and Building Act, 1974 (Act 133) dan By-Law 13(1) Uniform Building By-Laws 1984.

Encik Abdul Razak Ahmad took cudgel and strenuously argued that what was deposed by the Dato' Bandar in enclosure 7 was contrary to the report prepared by Erinco Sdn. Bhd. in regard to the floating City. He submitted that if the present development carried out by JCD was in regard to the widening of the road at Jalan Selat Tebrau why was there a need to instal electricity, water, gas telecommunication and sewerage infrastructures as deposed to by the Dato' Bandar in his further affidavit (enclosure 12) affirmed on 20 January 1995. It was further averred in enclosure 12 that buildings would be erected on the site once infrastructural works had been completed and this assertion runs counter to what was stated in enclosure 7. Encik Abdul Razak Ahmad argued and it was his case that the infrastructural works carried out by JCD as described by the Dato' Bandar came within the meaning of the word "building" in s. 3 of the Street, Drainage and Building Act, 1974 and since there was no prior written permission of the defendant, it contravened s. 70 of the Street, Drainage and Building Act, 1974. For ease of reference, the word building is defined in s. 3 of the Street, Drainage and Building Act, 1974 as follows:

> 'building' includes any house, hut, shed or roofed enclosure, whether used for the purpose of a human habitation or otherwise, and also any wall, fence, platform, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty, landing-stage or bridge, or any structure support or foundation connected to the foregoing.

Again, for convenience s. 70(1) of the Street, Drainage and Building Act, 1974 is reproduced below:

> No person shall erect any building without the prior written permission of the local authority.

I might as well add that a building erected in contravention of s. 70 of the Street, Drainage and Building Act, 1974 runs foul of the law and may be demolished (see s. 72(1)(b) of the Street, Drainage and Building Act, 1974). In paragraph 12 of enclosure 3, the plaintiff deposed that there was no special permission granted to JCD to commence building operations as provided for under by-law 13 paragraph (1) of the Uniform Building By-Laws, 1986 and this point was again highlighted by Encik Abdul Razak Ahmad in the course of his submission.

My attention was drawn to a passage appearing in the judgment of Haidar J, in *Abdul Razak Ahmad v. Kerajaan Negeri Johor (supra)* where his Lordship said:

> Though it would seem to appear that the project is in breach of the structure plan as the area of the project is reserved for recreational facilities...

and relying on this passage, Encik Abdul Razak Ahmad submitted that the floating city cannot be said to be the green lung as stipulated in the structure plan as the massive project undertaken there by JCD took it outside the scope of being the green lung for that area.

All said and done, the pertinent question to ask is this: Has the plaintiff *locus standi* either at law or by statute to bring and maintain an action against the defendant ?

The plaintiff said that he has *locus standi* and the factual situation expounded by Lord Diplock in *Letang v. Cooper* [1965] 1 QB 232 at page 242 and as adopted by *Government of Malaysia v. Lim Kit Siang, United Engineers (M) Bhd. v. Lim Kit Siang* [1988] 2 MLJ 12 SC, and in the context of the plaintiff in the present case, was said to be

(a) the plaintiff, a rate-payer in the city council of Johor Bahru; and

(b) he resides at No. 26, Jalan Rubi, Taman Kolam Air, Johor Bahru and according to him near to the floating city and he has to ply that street of the road, to and fro, to go to the city and, consequently, he says that he is exposed to the development there.

On these factual situations, the plaintiff submitted that he had a legitimate expectation that his letter to the Dato' Bandar be replied and he should not be left high and dry. Even an illegal immigrant was accorded an opportunity of being heard in *Attorney General of Hong Kong v. Ng Yuen Shiu* [1983] 2 AC 629 PC and as a Malaysian citizen surely he was entitled to receive a reply from the Dato' Bandar, so submitted the plaintiff. But the facts in *Attorney General of Hong Kong v. Ng Yuen Shiu* (*supra*) are poles apart from the present case. There the application who was born in China entered Hong Kong illegally from Macau in 1967. In 1976 he was removed to Macau but he re-entered illegally shortly afterwards and remained. By 1980 he was the part-owner of a small factory in Hong Kong. In October 1980 the Government announced changes in its immigration policy. It abandoned its "reached base" policy whereby illegal entrants had been allowed to remain once they had reached the urban areas without being arrested and it stated

that those who had entered illegally would be repatriated. It gave power to the Director of Immigration to make removal orders against them. The announcement created fears among the illegal entrants living in Hong Kong who had entered from Macau and who were of Chinese origin that they would be repatriated to China. On their petitioning the Governor, a senior immigration officer made an announcement of the Government's policy which it was intended should be applied to them. That included the statement that each illegal entrant from Macau would be interviewed and his case 'treated on its merits". Having been questioned by an immigration officer, the applicant was detained and the Director of Immigration then made a removal order against him without giving him an opportunity of making any representations as to why be should not be removed. The applicant applied to the High Court for orders of *certiorari* to quash the removal order and prohibition restraining the director from executing it. The full Bench of the High Court refused the application. On the applicant's appeal, the Court of Appeal granted an order of prohibition preventing the Director from executing the removal order until he had given the applicant an opportunity to be heard.

On the Attorney General's appeal to the Judicial Committee, it was held (dismissing the appeal) that where public authority charged with the duty of making a decision promised to follow a certain procedure before reaching that decision, good administration required that it should act by implementing the promise provided the implementation did not conflict with the authority's statutory duty; that, accordingly, assuming that an alien had no general right to be heard before being deported, the implementation of the promise to interview each illegal immigrant and decide each case on the merits required the applicant to be given an opportunity to state his case and the failure to ask him whether he wished to make representations why he should not be removed was a sufficient ground for setting aside the decision; and that accordingly, the Court would substitute for the inappropriate order of prohibition an order of *certiorari* to quash the decision.

The plaintiff next relied on *Lee Freddie & Ors. v. Majlis Perbandaran Petaling Jaya & Anor*. [1994] 3 MLJ 640 where the plaintiffs there were said to have legitimate expectations to be notified of any development and have their objections heard and using this as a leverage, the plaintiff argued that he too had a legitimate expectation of obtaining a reply to his letter addressed to the Dato' Bandar in his capacity as a rate payer in the city council of Johor Bahru. But the plaintiffs in *Lee Freddie's* case (*supra*) were owners and residents of three bungalows in the immediate vicinity of the proposed apartments scheduled to be built on the empty land. Whereas here, the plaintiff lived at Jalan Rubi, Taman Kolam Air which was some distance away from the floating city (see the location plan as per exhibit "ARA2" in enclosure 3).

As a rate-payer and a road user the plaintiff must show that his private rights have been infringed or if no private right has been infringed, he has suffered a special damage peculiar to himself over and above any infringement of his public rights before he can be vested with *locus standi*. Put in another way, the right to appear in Court is given to the plaintiff if he is suing to enforce some private right or even of some public right provided the interference with that public right causes direct damage to him. As a rate-payer, the plaintiff's house is not located near to the floating city. In fact it is located some miles away from it just like other rate-payers and in this regard the plaintiff has failed to show by evidence that he has suffered any special damage arising out of the alleged purported breach of the relevant law by the defendant. To give *locus standi* to a rate-payer like the plaintiff would open the floodgate and this would in turn stifle development in the country. There was no genuine private interest for the plaintiff to

protect. He was more concerned about the publicity that went along with this case. As a lawyer that kind of publicity must have been good to him. The Dato' Bandar aptly described him as a busybody. I venture to describe him as a trouble shooter, a maverick of a sort out to stir trouble.

As a road user, the plaintiff argued that he was affected by the development of the floating city since he travelled along the beach front to proceed to his office. He forgot that other road users also ply along that stretch of the road and applying the *Government of Malaysia v. Lim Kit Siang* (*supra*) he cannot be said to be prevented from using other available internal roads to proceed to his office. There was and is always an option for him to select - the beach road or the internal road.

The plaintiff relied heavily on *Lim Cho Hock v. Government of State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh* [1980] 2 MLJ 148 and *Tan Sri Haji Othman Saat v. Mohamed bin Ismail* [1982] 2 MLJ 177 to drive home the point that he too should be accorded *locus standi*. But these cases were described as "the high water marks of the law of *locus standi* in Malaysia" and that the plaintiffs in these cases "had a genuine private interest to be furthered and protected" (see *Government of Malaysia v. Lim Kit Siang* (*supra*)).

Tengku Jaafar bin Tengku Ahmad v. Karpal Singh [1993] 2 AMR 35: 2062, *Abdul Razak Ahmad v. Kerajaan Negeri Johor & Anor* (*supra*), *Lim Cho Hock v. Government of* State *of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh* (*supra*), *Tan Sri Haji Othman Saat v. Mohamed bin Ismail* (*supra*) and *Government of Malaysia v. Lim Kit Siang* (*supra*) all show a singular trend and that trend is this. For a plaintiff to found an action against the defendant who is a public body, he must show that he has suffered a peculiar damage by the alleged public wrong and that he has a genuine private interest to protect. Unfortunately, the plaintiff here failed to show by evidence that he has suffered any damage as a result of the construction of the floating city by JCD by way of nuisance or trespass except to say that he was aggrieved as a taxpayer and a road user. The Federal Court in District Council Central, *Province Wellesley v. Yegappan* [1966] 2 MLJ 177 ruled that even assuming there were definite breaches of the relevant by-laws and sections of the Municipal Ordinance, an applicant for an order of *certiorari* to quash the decision of the District Council had no *locus standi* if he had not shown any legal right or interest belonging to him would have been affected by the approval of the building plans. Applying *Yegappan's* case (*supra*), even assuming that there were breaches of the relevant laws by the defendant when it approved to JCD to develop the floating city, the plaintiff must positively show to the Court that his legal right or interest would be affected by that development before he can be said to have *locus standi*. This the plaintiff has failed to prove and, consequently, he has no *locus standi* in these proceedings.

The plaintiff would still be on flimsy ground in regard to prayer 3 of his originating summons in enclosure 4. The letter to the Dato' Bandar adverted to the question as to whether notice had been given to the owners of the lands adjoining the floating city under s. 21(6) of the Town and Country Planning Act, 1976 which provides as follows:

> If the proposed development is located in an area in respect of which no development plan exists for the time being, then, upon receipt of an application for planning permission, or, where directions have been given under subsection (3), upon compliance with the directions, the local planning authority shall, by notice in writing served on them, inform the owners of the lands adjoining the land to which the application relates to their right to object to the application and to state their grounds of objection within twenty-one days of the date of service of the notice.

The crucial word in s. 21(b) of the Town and Country Planning Act, 1976 is the word "adjoining". It is quite obvious that the plaintiff's house is not located on a piece of land adjoining the project undertaken by JCD and this is clearly reflected in the location plan (exhibit 'ARA2' of enclosure 3). The word "adjoining" has been described in several fashions. Thus, Parke J., in *R. v. Hodges* [1829] 173 ER at page 1182 defined it in this context: "... ground cannot be properly said to adjoin a house, unless it is absolutely contiguous ...". Luxmoore J., *In re Ecclesiastical Commissioners for England's Conveyance* [1936] 1 Ch. Div page 430 especially at page 440 said "When used in conjunction with the word "land," the word "adjoining" in its primary sense means that which lies near so as to touch in some part the land which it is said to adjoin." Finally, Sir RH Sherwood in *Mac Donald v. Glasgow Corporation* [1960] SLT Sh. C.T 21 (Scottish Law Times) held in regard to adjoining land under the provisions of the UK Town and Country Planning Act, 1947, s. 10(3)(b) to mean the contours of land immediately adjoining the site in question.

By comparison, the *Shorter Oxford English Dictionary* combined with *Britannica World Language Dictionary*, volume one at page 23 defines the word "adjoining" simply as "lying next".

It is quite difficult to construe the word adjoining favourably for the plaintiff for the simple reason that his house is far away from the floating city. Put bluntly, the plaintiff is not an adjoining land owner to enable him to assert positively that his legal position would be affected by the planning permission that was granted to JCD by the defendant. In this regard *Freddie Lee'*s case (*supra*) is of no assistance to the plaintiff because on the facts it can easily be distinguished. As stated earlier, in *Freddie Lee's* case (*supra*) the plaintiffs there were the owners and residents of bungalows located in the immediate vicinity of the disputed project.

Even O. 15 r. 16 of the RHC which reads as follows:

> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed.

does not exempt the plaintiff claiming declaratory relief from showing that he has *locus standi* to found his action *Government of Malaysia v. Lim Kit Siang* (*supra*), *Tengku Jaafar bin Tengku Ahmad v. Karpal Singh* (*supra*), and *Abdul Razak Ahmad v. Kerajaan Negeri Johor & Anor.* (*supra*)). It is not incorrect to state, from a long line of authorities, that the power to make binding declaration of right is a discretionary power (*Dyson v. Attorney General* [1911] 1 KB page 417, *Ibeneweka v. Egbuna* [1964] 1 WLR 219 PC and *Guaranty Trust Co. v. Hannay* [1915] 2 KB 536) and the applicant will not, as of right, be entitled to it. Another point that needs emphasis is this: a declaration can only be made after proper argument and cannot be made merely on admissions by the parties whether in pleadings or otherwise (*Helzger v. Department of Health and Social Security* [1977] 3 ALL ER. 444, 451). Of pertinence too would be what was laid down in *Thorne Rural District Council v. Bunting* [1972] Ch. 470; [1972] 2 WLR 517; [1971] 1 ALL ER 439 to the effect that the remedy of declaration being wide and flexible will not be granted to a plaintiff whose claim is too indirect and insubstantial and would not relieve him from any disadvantage or difficulty.

Thus, the plaintiff lacking *locus standi* in law or by statute cannot ask for the declaration in prayer 1 of enclosure 4 to the effect that the planning permission granted on 12 January 1994 was invalid as it contravened the Town and Country Planning Act, 1976 or for

that matter the commencement of the works by JCD was contrary and in breach of the Street, Drainage and Building Act, 1974 read together with the Uniform Building By-Laws, 1986 unless he can show positively and affirmatively that the alleged breaches have substantially caused damage to him personally (*Government of Malaysia v. Lim Kit Siang* (*supra*) per Hashim Yeop Sani SCJ at pages 40 - 41). As a mere busybody and without standing he was not entitled to receive a reply from the Dato' Bandar in regard to his letter dated 7 September 1994. The stringent requirement as propounded by Abdul Hamid CJ (as he then was) in *Government of Malaysia v. Lim Kit Siang* (*supra*) where his Lordship said: "Thus, in my view, there shall be a stringent requirement that the applicant ... to acquire *locus standi* has to establish infringement of a private right or the suffering of special damage .... " should be vigorously applied to the plaintiff in this case.

The defendant argued through his Counsel that there was no material to show that the Attorney-General as the guardian and protector of public interest has given his consent to support the plaintiff's originating summons in enclosure 4. In short, the defendant submitted that since this was not a relator action the plaintiff must show his standing to commence enclosure 4. I agree and I must add that the plaintiff was trying to circumvent O. 53 of the RHC when he sought for prayer 3 because that prayer was more in the nature of mandamus.

The plaintiff must have thought that by seeking declaration for prayer 3, he need not obtain the necessary leave as spelt out in O. 53 of the RHC. It is apparent that it was an abuse of the process of the Court for the plaintiff to proceed by way of an originating summons in enclosure 4 when he knew fully well that by so doing he would be bypassing the leave requirement as stipulated in O. 53 of the RHC.

Incidentally, I was advised from the bar by the defendant's Counsel that the State Authority has since given its assent to the draft structure plan of the Johor Bahru city council incorporating the floating city *vide* Government Gazette number 25, Jilid 38 dated 22 December 1994. The said structure plan was said to be operative from 8 June 1994. This meant that subsequent events have turned the colour of the case from blue to black. The case can be classified as hopeless as the proceedings which were viable when instituted have by reason of the happening of subsequent events become inescapably doomed to failure. As such, the originating summons in enclosure 4 amounted to nothing more than an abuse of the process of the Court (*Domer v. Gulf Oil (Great Britain)* [1975] 119 SJ 392).

For the reasons adumbrated above, I felt that this was a fit and proper case for me to exercise my discretionary powers under O. 18 r. 19(1)(a) and (d) of the RHC and, consequently, I ordered that originating summons in enclosure 4 be struck out and dismissed with costs.